

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

MICHAEL CAMERENO, *

Petitioner, *

vs. *

CASE NO. 4:10-CR-45 CDL MSH
28 U.S.C. § 2255

UNITED STATES OF AMERICA, *

Respondent. *

RECOMMENDATION OF DISMISSAL

Petitioner Camereno pled guilty to manufacturing Marijuana in this Court on February 2, 2011. (ECF Nos. 33, 34.) On June 27, 2011, Petitioner was sentenced to a term of imprisonment of 120 months plus five years of supervised release. (ECF No. 50.) Petitioner filed a timely Notice of Appeal on June 28, 2011. (ECF No. 54.)

The following day, June 29, 2011, Petitioner Camereno filed in this Court a Motion To Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (ECF No. 55.) This Court is without jurisdiction to entertain Petitioner's Motion.

“The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over the aspects of the case involved in the appeal.” *Griggs v. Providential Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *See also United States v. Vicaria*, 963 F. 2d 1412, 1415 (11th Cir. 1992) (cert. denied) and *United States v. Tovar-Rico*, 61 F. 3d 1529 (11th Cir. 1995). The general rule is that the filing of a direct appeal divests the trial court of the authority to modify a sentence. *Shewchun v. United States*, 797 F.2d 941, 942 (11th

Cir. 1986). “seeking review on the merits of an appealable matter precludes a trial court from considering the merits of a motion … until such time as the appeal is concluded and jurisdiction re vested in the trial court.” *Id.* at 943. The motion may be dismissed without prejudice. *See United States v. Prows*, 888 F. 2d 100,101 (11th Cir. 1989).

Therefore, until such time as The United States Court of Appeals for the Eleventh Circuit renders its decision in this case, this District Court is without jurisdiction to review Petitioner’s claims.

WHEREFORE, IT IS Recommended that Petitioner’s Motion To Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 be dismissed without prejudice as premature. Pursuant to 28 U.S.C. § 636(b)(1), Petitioner may file objections to this Recommendation in writing with the UNITED STATES DISTRICT COURT within FOURTEEN (14) DAYS after being served with a copy hereof.

SO RECOMMENDED this 30th day of June, 2011.

S/ Stephen Hyles
UNITED STATES MAGISTRATE JUDGE